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Paper No. 24

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OFFICE OF PETITIONS

ON PETITION

In re Application of
Einarson, et al.
Application No. 09/241,744
Filed: February 1, 1999
Attorney Docket No. 406-01US
For: MULTI-LEVEL MONITORING WELL

This is a decision on the petition under 37 CFR 1.137(b), filed December 23, 2002, to revive the above-identified application. In addition, this decision will address the paper filed April 29, 2003 that requests withdrawal of the holding of abandonment. The April 29, 2003 paper will be treated as a petition under 37 CFR 1.181.

The petition under 37 CFR 1.137(b) is **DISMISSED**.

The petition under 37 CFR 1.181 is **DISMISSED**.

Any petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Petition under 37 CFR 1.137(b)." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to timely submit \$9 in claim fees within one month of the September 21, 2001 Informality Re Payment of Fee. The previous attorney of record attempted on to pay the \$9 fee and an extension of time fee. However, the attorney's credit card was declined. Therefore, the application became abandoned on October 22, 2001. On March 25, 2002 a Notice of Abandonment was mailed.

Although petitioner filed his petition to revive first in time, logic dictates that his petition to withdraw the holding of abandonment be treated first.

PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

Petitioner argues that the holding of abandonment should be withdrawn. Petitioner contends that the September 21, 2001 Informality Re Payment of Fee was mailed in error and the requirement should be withdrawn. Furthermore, petitioner desires the Office to refund \$209, comprising a \$9 extra claims fee and a \$200 extension of time fee.

The September 21, 2001 Informality Re Payment of Fee was not mailed in error. The Office required an election in this application. The former attorney of record on May 16, 2001 elected claims 1-6 and 16-20. The former attorney of record never canceled the remaining claims. Thus,

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25 claims remained. In the June 12, 2001 non-final Office action, the examiner stated claims 7-15 and 21-25 were withdrawn from consideration. The examiner never stated they were canceled because they were not canceled by the former attorney of record.

As stated in MPEP 607, "After a requirement for restriction, nonelected claims will be included in determining the fees due in connection with a subsequent amendment unless such claims are canceled." Thus, after petitioner added another claim in the amendment filed September 18, 2001, petitioner had 26 claims. **An additional \$9 was properly required and is still required.**

The \$9 is still required because, as stated above, the former attorney's credit card was declined. The \$200 extension of time and the \$9 claim fee were never charged. No refund is due.

In summary: The September 21, 2001 Informality Re Payment of Fee Petition was proper, petitioner did not pay the required \$9 fee, and the application is properly held abandoned. The petition under 37 CFR 1.181 is dismissed.

PETITION TO REVIVE UNDER 37 CFR 1.137(b)

The provisions of 37 CFR 1.137(b) provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply, unless previously filed;
- (2) the petition fee as set forth in 37 CFR 1.17(m);
- (3) a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and
- (4) any terminal disclaimer (and fee set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

The instant petition does not satisfy requirement (1). Nine dollars is required.

Further correspondence with respect to this matter should be addressed as follows:

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Telephone inquiries concerning this decision should be directed to the undersigned at (703) 308-6712.

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